

EXHIBIT G

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 No. 1:11-cv-05459 (WHP)

-----x

5
6 RETIREMENT BOARD OF THE POLICEMEN'S
7 ANNUITY AND BENEFIT FUND OF THE
8 CITY OF CHICAGO, et al.

9 (On Behalf of Themselves and
10 Similarly Situated Certificate
11 Holders),

Plaintiffs,

-against-

12 THE BANK OF NEW YORK MELLON
13 (as Trustee Under Various
14 Pooling and Servicing
15 Agreements),

Defendant.

-----x

16 405 Lexington Avenue
17 New York, New York
18 August 14, 2013
19 9:35 a.m.

20 30(b)(6) VIDEOTAPED DEPOSITION of
21 BANK OF NEW YORK MELLON and its
22 Representative GERARD FACENDOLA, held at
23 the aforementioned time and place, before
24 Sherri Flagg, a Registered Professional
25 Reporter, Certified LiveNote Reporter, and
Notary Public.

1 - G. FACENDOLA -

2 Facendola Exhibit 1 a 30(b)(6)
3 deposition notice with two items on it,
4 and as Facendola 2 a deposition
5 30(b)(6) deposition notice with one
6 item on it.

7 (Exhibit 1: 30(b)(6) deposition
8 notice, was marked for identification.)

9 (Exhibit 2: 30(b)(6) deposition
10 notice, was marked for identification.)

11 BY MS. KASWAN (continuing):

12 Q. Mr. Facendola, have you seen the
13 Notices of Deposition marked as Facendola 1
14 and Facendola 2? And you can look at the
15 subjects on page 4 for Facendola 1 and for
16 Facendola 2, the deposition subject matters.

17 A. (Perusing exhibit.)

18 No, I don't recall seeing these.

19 Q. All right. Well, can you turn to
20 Facendola 1, page 4, and could you read that
21 page to yourself, the items 1 and 2.

22 A. (Perusing exhibit.)

23 Okay.

24 Q. And then could you turn to
25 Facendola Number 2, to page 4.

1 - G. FACENDOLA -

2 A. Okay.

3 Q. And could you read that to
4 yourself, item 1 there.

5 A. (Perusing exhibit.)

6 Okay.

7 Q. Do you have knowledge of those
8 three groups of matters from your own
9 employment at Bank of New York Mellon?

10 A. Yes.

11 Q. And what did you do in order to
12 prepare for your testimony here today?

13 A. I met with my attorneys.

14 Q. And who was that?

15 A. Lisa and Mike.

16 Q. So that's Mr. Martinez and
17 Ms. Plush?

18 A. Yes.

19 Q. And when did you meet with them?

20 A. Monday.

21 Q. Is that the first time you met
22 with them?

23 A. Yes.

24 Q. So that would be yesterday?

25 A. No, two days ago.

<p style="text-align: right;">Page 38</p> <p>1 - G. FACENDOLA -</p> <p>2 Q. I mean two days ago.</p> <p>3 Approximately how long did you</p> <p>4 meet?</p> <p>5 A. A few hours.</p> <p>6 Q. Apart from meeting them, did you</p> <p>7 do anything else to prepare for your</p> <p>8 testimony here today?</p> <p>9 A. No.</p> <p>10 Q. Did you review any documents?</p> <p>11 MR. MARTINEZ: Objection, vague.</p> <p>12 A. During my preparation.</p> <p>13 Q. So during the session that you had</p> <p>14 with counsel?</p> <p>15 A. Correct.</p> <p>16 Q. But other than that, you didn't</p> <p>17 review any documents?</p> <p>18 A. No.</p> <p>19 Q. Are you still in the DAG group?</p> <p>20 A. Yes.</p> <p>21 Q. And what is your position there</p> <p>22 now?</p> <p>23 A. I'm manager of the domestic</p> <p>24 employees for DAG.</p> <p>25 Q. Of domestic employees?</p>	<p style="text-align: right;">Page 40</p> <p>1 - G. FACENDOLA -</p> <p>2 announced in January of 2008, it would be</p> <p>3 your understanding that that's when you</p> <p>4 learned about it?</p> <p>5 A. If it was publicly announced at</p> <p>6 that time, yes.</p> <p>7 Q. And did you learn about it from</p> <p>8 the press, or did you learn about it in</p> <p>9 connection with your job?</p> <p>10 A. From the press and media.</p> <p>11 Q. After you learned about it from</p> <p>12 the media, did you discuss the potential</p> <p>13 merger with anybody at Bank of America or</p> <p>14 Countrywide?</p> <p>15 A. No.</p> <p>16 Q. Was there a particular person with</p> <p>17 whom you dealt at Countrywide during 2008?</p> <p>18 A. No.</p> <p>19 Q. Was there anybody at Bank of</p> <p>20 America with whom you dealt in 2008?</p> <p>21 A. No.</p> <p>22 Q. What is the source of your</p> <p>23 information about the July 2008 and November</p> <p>24 2008 transactions?</p> <p>25 A. What's -- I'm sorry?</p>
<p style="text-align: right;">Page 39</p> <p>1 - G. FACENDOLA -</p> <p>2 A. The domestic DAG employees.</p> <p>3 Q. And what does that entail?</p> <p>4 A. The DAG RMs that sit in New York,</p> <p>5 Pittsburgh, Houston and New Albany.</p> <p>6 Q. So they report to you?</p> <p>7 A. Yes.</p> <p>8 Q. And then do you report to</p> <p>9 Ms. Lundberg?</p> <p>10 A. Yes.</p> <p>11 Q. And has that been true since the</p> <p>12 end of 2010?</p> <p>13 A. Yes.</p> <p>14 Q. All right. If we could turn to</p> <p>15 Facendola 1, page 4. When did you first</p> <p>16 learn of the potential merger between</p> <p>17 Countrywide Financial Corporation and Red</p> <p>18 Oak?</p> <p>19 A. I don't recall.</p> <p>20 Q. Did you learn about it at or about</p> <p>21 the time of the public announcement of the</p> <p>22 merger?</p> <p>23 A. That's when I would have learned</p> <p>24 about it, yes.</p> <p>25 Q. So assuming it was publicly</p>	<p style="text-align: right;">Page 41</p> <p>1 - G. FACENDOLA -</p> <p>2 Q. How did you learn about them? To</p> <p>3 the extent that you have been designated to</p> <p>4 testify about those transactions, where did</p> <p>5 you get your information?</p> <p>6 A. Again, through the press and</p> <p>7 anything that would have come across my desk</p> <p>8 or if I had to deal with someone on specific</p> <p>9 transactions.</p> <p>10 Q. Well, apart from the press, tell</p> <p>11 me what information you received about those</p> <p>12 transactions in the course of your duties.</p> <p>13 A. I'm not sure I understand what you</p> <p>14 mean by "the transactions." To me that's</p> <p>15 broad.</p> <p>16 Q. Well, you've been designated to</p> <p>17 testify about them. What did you understand</p> <p>18 the July 2008 transaction between</p> <p>19 Countrywide and the Bank of America</p> <p>20 subsidiary called Red Oak to be?</p> <p>21 A. Well, that there was a merger and</p> <p>22 an assumption. So there was Red Oak and</p> <p>23 Bank of America; there was basically, again,</p> <p>24 a merger and an assumption during that time.</p> <p>25 Q. When you say -- are we talking</p>

11 (Pages 38 - 41)

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1 - G. FACENDOLA -
2 about the July 2008 transaction?
3 A. That's the title of it, but I'd
4 have -- I'd have to see what it actually
5 refers to.
6 Q. Well, do you know, sir, that debt
7 was assumed in the November 2008
8 transaction? Do you know that two separate
9 steps, one in July of 2008 and another in
10 November of 2008?
11 A. From the public filings, yes.
12 Q. So all you know about those two
13 transactions is from the public filings?
14 A. Yes.
15 Q. Did you personally read the public
16 filings?
17 A. I don't recall.
18 Q. When you say --
19 MR. MARTINEZ: Are you saying at
20 the time that they came out or during
21 the preparation?
22 Q. Well, are you saying all that you
23 know about the assumption of debt and the
24 merger is what you learned from public
25 filings that your counsel showed you two

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1 - G. FACENDOLA -
2 days ago? Is that what you're here to
3 testify about?
4 A. Again, I don't -- I don't
5 understand what you're asking at this point.
6 Q. I want -- I'm asking you what you
7 knew back in 2008 about these transactions,
8 not what public filings you read two days
9 ago.
10 What did you know about these
11 transactions back in 2008?
12 A. Only what was, again, publicly
13 disclosed is what I knew about those
14 transactions.
15 Q. Well, there was a lot that was
16 publicly disclosed. Did you know what was
17 contained in the SEC filings by Countrywide
18 back in 2008?
19 A. I don't recall exactly what I knew
20 back then. I'm sure I read the public
21 filings back then. I don't recall the
22 content of those public filings.
23 Q. And was it your practice, back in
24 2008, to read the newspapers about matters
25 under your purview at Bank of New York

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1 - G. FACENDOLA -
2 Mellon?
3 A. I would read the newspapers, yes.
4 Q. So did you read The New York
5 Times, for example?
6 A. Not so much The New York Times.
7 Probably Wall Street Journal or Star Ledger.
8 Q. How about Bloomberg?
9 A. Yes, possibly.
10 Q. Was there a group within DAG or
11 within BONY Mellon generally that monitored
12 press accounts for bankruptcy and default
13 matters that DAG was handling?
14 A. No.
15 Q. So there were no press ticklers,
16 for example, that you received?
17 A. No, not in 2008, no.
18 Q. Did you generally receive
19 information from your staff about things in
20 the press regarding matters you were
21 handling?
22 A. Conversations possibly, yes.
23 Q. In 2008 was Mr. Feig responsible
24 for potential default and bankruptcy issues
25 regarding Countrywide?

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1 - G. FACENDOLA -
2 A. Yes.
3 Q. Was he your primary source of
4 information about Countrywide?
5 A. Yes.
6 Q. Now, in November of 2008, were
7 there new indentures issued for commercial
8 notes that had been earlier issued by
9 Countrywide?
10 A. I'm sorry, I don't understand the
11 question.
12 Q. In November of 2008, did Bank of
13 America assume the debt for commercial notes
14 for which BONY Mellon was a trustee?
15 A. It could have, yes.
16 Q. Well, do you know whether they
17 did?
18 A. I know there were supplements done
19 to reflect name changes, so I'm assuming
20 that -- it's possible that those
21 transactions could have been entailed with
22 those supplements.
23 Q. And who at BONY Mellon was
24 responsible for those supplements?
25 A. That would have been done from the

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1 - G. FACENDOLA -
2 identified on Schedule 1 attached.
3 And then the next "whereas" says,
4 (reading):
5 In consideration for assets to be
6 acquired pursuant to the stock
7 purchase, BAC will assume the
8 indebtedness and obligations of the
9 corporations, et cetera.
10 Then if you could turn to
11 Schedule 1, it's on the page where the
12 Bates number ends 534.
13 A. Okay.
14 Q. Who at BONY Mellon was involved in
15 facilitating the assumption by BAC of those
16 securities?
17 MR. MARTINEZ: Objection, assumes
18 a fact not in evidence.
19 A. I don't know.
20 Q. Who at Bank of New York Mellon was
21 involved in signing the new indentures and
22 notes for the transfer of this debt?
23 A. It would be the business line.
24 Q. And when you say "the business
25 line," can you tell me who?

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1 - G. FACENDOLA -
2 A. Specifically people?
3 Q. Which business line and who, yes.
4 A. The business lines that would have
5 been involved would have been the MBS
6 business line, I don't know the individuals
7 that were working on it; or the corporate
8 finance business line, and I don't know the
9 individuals that were working on it.
10 Q. Who at BONY Mellon had discussions
11 with Countrywide or Bank of America to
12 effectuate those transfers?
13 A. I don't know.
14 Q. Who do you think would know that?
15 A. Again, the people that were
16 employed in those specific business lines,
17 the corporate finance or MBS business lines,
18 that would handle that specific
19 relationship.
20 Q. Did you speak to the holders of
21 any of this debt in 2008?
22 MR. MARTINEZ: Objection, vague.
23 A. I don't recall a conversation.
24 Q. Did any of the investors in any of
25 this debt that's described on Schedule 1

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1 - G. FACENDOLA -
2 contact BONY Mellon?
3 MR. MARTINEZ: Objection, vague.
4 A. There's quite a few deals here.
5 If there was one specific holder, possibly.
6 I don't recall a specific holder.
7 Q. Well, BONY Mellon sued Countrywide
8 in connection with this debt, didn't they,
9 or at least some of it?
10 A. There was a lawsuit, yes.
11 Q. And who contacted BONY Mellon in
12 connection with that lawsuit?
13 A. It would have been the certificate
14 holders.
15 Q. Which certificate holders?
16 MR. MARTINEZ: Objection, vague.
17 A. I can't tell from this listing.
18 Q. Well, in connection with your
19 preparation to testify here today, did you
20 learn who was involved in connection with
21 the Delaware lawsuit that BONY Mellon
22 brought?
23 A. The specific holders?
24 Q. Yes.
25 A. No, I did not.

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1 - G. FACENDOLA -
2 Q. Do you know any person for --
3 representing the holders who contacted BONY
4 Mellon?
5 A. There was probably a law firm that
6 represented the holders contacting us.
7 Q. And who was that?
8 A. I -- I don't know.
9 Q. How did the lawsuit come to be
10 filed?
11 A. The holders directed and
12 indemnified the bank to do so.
13 Q. And who directed BONY Mellon to do
14 so?
15 MR. MARTINEZ: Objection, asked
16 and answered.
17 Q. You don't know; is that the
18 answer?
19 A. The specific holders, I don't
20 know.
21 Q. And you don't know the law firm
22 that BONY Mellon dealt with?
23 A. I don't recall.
24 Q. And you reviewed no documents that
25 would permit you to testify with respect to

<p style="text-align: right;">Page 54</p> <p>1 - G. FACENDOLA - 2 that matter; is that correct? 3 MR. MARTINEZ: Objection. That 4 goes into attorney work product and 5 privilege during our preparation, and I 6 instruct you not to answer. 7 MS. KASWAN: All right. I'm going 8 to terminate this deposition. This 9 witness is obviously not an appropriate 10 witness, has no knowledge from which to 11 testify at this deposition. 12 And I am going to ask that Mayer 13 Brown and BONY Mellon appoint an 14 appropriate witness to testify on these 15 subjects because obviously this witness 16 knows absolutely nothing about the 17 matters in these notices. 18 MR. MARTINEZ: I disagree. The 19 witness has been prepared and knows 20 quite a bit about the matters. If you 21 want to continue your questioning, 22 we're prepared to stay and answer your 23 questions. 24 MS. KASWAN: He obviously knows 25 nothing.</p>	<p style="text-align: right;">Page 56</p> <p>1 2 STATE OF NEW YORK) 3) ss: 4 COUNTY OF NEW YORK) 5 6 7 I, GERARD FACENDOLA, the witness 8 herein, having read the foregoing testimony 9 of the pages of this deposition, do hereby 10 certify it to be a true and correct 11 transcript, subject to the corrections, if 12 any, shown on the attached page. 13 14 _____ 15 GERARD FACENDOLA 16 17 Sworn and subscribed to before me 18 this _____ day of _____ 2013. 19 20 _____ 21 NOTARY PUBLIC 22 23 24 25</p>
<p style="text-align: right;">Page 55</p> <p>1 - G. FACENDOLA - 2 MR. MARTINEZ: I disagree. 3 MS. KASWAN: We'll take it up with 4 the Court. We're off the record. 5 VIDEO TECHNICIAN: The time on the 6 video monitor is 11:05 a.m. We're off 7 the record. This ends our deposition. 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 57</p> <p>1 2 I N D E X 3 EXAMINATION OF 4 GERARD FACENDOLA PAGE 5 By Ms. Kaswan 5 6 7 E X H I B I T S 8 FACENDOLA 9 EXHIBIT DESCRIPTION PAGE 10 Exhibit 1: 30(b)(6) deposition 36 11 notice 12 Exhibit 2: 30(b)(6) deposition 36 13 notice 14 EXHIBITS PREVIOUSLY MARKED/DISCUSSED: 15 FEIG 16 Exhibit 14..... 49 17 18 19 20 21 22 23 24 25</p>

15 (Pages 54 - 57)